

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH**

In the Matter of the Appeal of the)	No. SDP19-00001
)	
Issaquah Environmental Council)	Evergreen Ford and Lincoln Appeal
)	SDP Appeal
)	
)	FINDINGS, CONCLUSIONS,
<u>Of a Site Development Permit</u>)	AND DECISION

SUMMARY OF DECISION

This appeal involves a challenge to site development permit (SDP) approved by the City of Issaquah Development Commission (Commission) for the proposed development of a new automotive sales and service facility at 22975 SE 66th Street.¹ The Issaquah Environmental Council (IEC) alleges that the Commission erred, on several grounds, in issuing the SDP. Because substantial evidence in the record supports the Commission decision, the appeal is **DENIED**.

SUMMARY OF PROCEEDINGS

Hearing Date:

The Hearing Examiner convened a closed record appeal on the Site Development Permit on December 9, 2019. The record was left open until December 30, 2019, to allow the parties to submit closing briefs.²

Attorney David A. Bricklin represented the Appellant.
Attorneys Wright Noel and Stewart Carson represented the Applicant
Attorney Jim Haney represented the City

Exhibits:

The exhibits in Attachment A were admitted into the record. Attachment A also includes a list of pleadings received by the Hearing Examiner related to the SDP appeal, as well as various orders and pre-hearing decisions produced by the Hearing Examiner in relation to the SDP appeal.

¹ The Issaquah Environmental Council also appealed the Mitigated Determination of Nonsignificance (MDNS) issued for the proposal under the State Environmental Policy Act (SEPA). The SEPA appeal (No. SEP19-00004) has been decided in a separate decision issued concurrently with this appeal decision, following a consolidated hearing as required by Washington Administrative Code 197-11-680(3)(v) and Issaquah Municipal Code (IMC) 18.04.256.

² IMC 18.04.250 allows the Hearing Examiner 90 days to issue a decision following a SEPA appeal where, as here, the decision is consolidated with an appeal under SEPA.

FINDINGS

Background

1. On March 5, 2019, Evergreen Ford Lincoln (Applicant) submitted a site development permit (SPD) application to construct, in phases, an automotive dealership and service facility, with associated improvements, on a 3.92-acre site. The North Fork of Issaquah Creek (North Fork), a perennial stream with salmonids, crosses the northern edge of the site and an unnamed tributary of the North Fork (Tributary) is located off-site just south of the property, within right-of-way owned by the Washington State Department of Transportation (WSDOT). The Applicant would reduce the 100-foot stream buffer associated with the North Fork by 25 percent, under Issaquah Municipal Code (IMC) 18.10.790, as part of development. As mitigation for the buffer reduction, the Applicant would enhance 19,570 square feet of buffer adjacent to the North Fork. As is explained in greater detail below, the City does not consider the Tributary a regulated critical area under the municipal code because it fails to meet the definition of a “stream” under IMC 18.10.390. The property is located at 22975 SE 66th Street.³ *Exhibit C-1; SDP 0984 - 0998.*
2. The currently vacant project site formerly housed a dog kennel and consists primarily of open grassy fields with a mix of mostly tall deciduous trees growing in groups along the parcel boundaries. In October of 2017, WSDOT completed a realignment of the North Fork through the subject property as part of a fish passage/culvert replacement and habitat improvement project. This created new habitat on the subject property and reintroduced an additional mile of habitat upstream of the site on the North Fork to native and migratory fish. The realignment project also included realignment of the off-site Tributary. WSDOT planted native trees, shrubs, and groundcover plants above the ordinary high water mark (OHWM) of the North Fork and the Tributary, as part of the realignment project. Some of the mitigation plantings were installed within the WSDOT right-of-way; some were planted on the subject property. *Exhibit C-1.b; SDP 0224 – 0258; SDP 0288 – 0293.*

Initial Technical Review

3. Extensive review of the proposal began shortly after the Applicant submitted its initial project plans, resulting in: preparation of a Critical Areas Study (CAS), dated April 8, 2019, prepared by O’Neill Service Group (OSG), on behalf of the Applicant, and revisions to the CAS and project plans, in response to comments from the City’s third party environmental consultant, The Watershed Company, on several occasions. Ultimately, on May 16, 2019, the Applicant submitted a Revised CAS, prepared by OSG. The Revised CAS incorporated a stream delineation study of the North Fork, as requested by The Watershed Company. In addition, the Revised CAS increased the number of native plants that would be installed in the reduced stream buffer abutting the North Fork

³ The property is identified by Tax Assessor Parcel No. 2724069086. *Exhibit C-5.*

from 1,027 to 1,577 and increased the amount of woody debris from two to four pieces, consistent with suggestions from The Watershed Company. On June 4, 2019, The Watershed Company provided a third memorandum assessing the Revised CAS, which generally determined that it would meet municipal requirements. *Exhibit C-1; SDP 0219 - 0491.*

Initial Review by Rivers and Streams Board

4. The City's Rivers and Streams Board (Board), which is tasked with "advising the Mayor and City Council of actions necessary" to "protect, preserve, and enhance the water quality in the waterways of Issaquah, and to protect the fish, birds, and mammals that depend upon such aquatic environments," under IMC 18.03.400, first reviewed the proposal on March 26, 2019. At that time, however, the Applicant had not yet submitted its CAS. Accordingly, the Board reviewed the proposal again on June 4, 2019. Following discussion, including discussion of the Tributary and whether it would meet the definition of a stream under the municipal code, the Board did not resolve whether to recommend approval of the buffer reduction. *Exhibit C-1.f.*

Initial Review by Development Commission

5. The City's Development Commission (Commission), which has authority to review and approve SDP applications under IMC 18.04.430(B) and -.450(A), began review of the proposal on May 1, 2019, at a duly noticed public meeting. At the meeting, several comments were received about environmental impacts from the proposal, including concerns over tree retention and density, and the proposed stream buffer reduction along the North Fork. The meeting was continued to August 21, 2019, to allow for the submission of additional information and public comment. At the continued meeting, several members of the public expressed concern, primarily over an additional topic: whether the Tributary should be protected as a critical area under the municipal code because it provides habitat for salmonids. City staff conveyed to the Commission that, in its assessment, the Tributary would not be defined as a "stream" under the municipal code (IMC 18.10.390) because it does not receive water from natural sources and, because of this, it would not be regulated as a critical area. Staff noted, however, that additional protection could be provided to the Tributary under the City's SEPA authority. Ultimately, the Commission unanimously decided to remand the proposal to City staff for further study, including further analysis of issues associated with the Tributary. *SDP 0001 - 0370.*

Additional Technical Review

6. In response to the remand, OSG, along with SCJ Alliance, prepared a memorandum, dated September 11, 2019, assessing the water sources of the Tributary (Water Source Memorandum), on behalf of the Applicant. The Water Source Memorandum specifically focused on whether the Tributary "was draining/conveying water from natural sources or human-built stormwater systems." Following review of available information from

WSDOT (related to the stream realignment) and from the Issaquah Highlands Comprehensive Storm Drainage System Maps, a topographic survey, and multiple field visits, OSG and SCJ Alliance determined that two drainage basins contribute surface water to the Tributary, with approximately 75 percent of stormwater runoff entering the Tributary from human-built stormwater systems serving the Issaquah Highlands development and the remaining 25 percent of stormwater runoff entering the Tributary from portions of Lakeside, Cadman, and the surrounding commercial and industrial developments. The Water Source Memorandum ultimately determined that “the only water sources draining to the Tributary are human-built stormwater systems” and that no “natural sources were identified as draining to the Tributary.” Because of this, the Tributary would not be regulated as a stream under IMC 18.10.390. *Exhibit C-1.c.*

7. OSG prepared an additional memorandum, dated September 25, 2019, assessing the proposal’s “potential direct or indirect impact on the small tributary to the North Fork of Issaquah Creek,” especially in relation to whether the proposal would have a “significant direct or indirect adverse impact on those functions and services that benefit fish and wildlife” (Fish Habitat Memorandum). The Fish Habitat Memorandum stressed that the Tributary “does not meet the definition of a stream under the Issaquah Municipal Code” but, despite this, “is connected to the broader watershed through its surface connection to the North Fork of Issaquah Creek and, along with its riparian buffer, may provide ecological services and functions that benefit fish and wildlife.” The Memorandum addressed water quality functions; enhanced stormwater treatment that would occur on-site, including pollutant infiltration; fine sediment control; attenuated flow rates; the dependability of the proposed stormwater system; shading function; and large woody debris recruitment. Ultimately, the Fish Habitat Memorandum determined that, considering “the limited potential of the Tributary’s buffer,” “the retained native WSDOT plantings that will provide shade and habitat function,” and other mitigating factors, including the enhanced stormwater treatment that would be provided, the proposal would “have no significant, direct or indirect, adverse impact to environmental functions provided by the Tributary and its riparian buffer.” *Exhibit C-1.d.*
8. The Watershed Company provided an additional memorandum, dated September 26, 2019, reviewing the Fish Habitat Memorandum. In it, The Watershed Company concurred with the Applicant’s assessment that the Tributary would not be regulated as a stream under IMC 18.10.390; agreed that the Tributary “provides off-channel fish habitat, important for rearing salmonids and as refuge during high-flow events;” and provided an analysis of existing scientific literature related to pollutants, shading, large woody debris recruitment, and the relationship between fish and macroinvertebrates. Ultimately, The Watershed Company determined:

Given existing conditions, water quality functions and shading for temperature are the two primary functions that must be protected to

maintain the [Tributary] as viable off-channel rearing and refuge habitat (primarily during the winter and early spring) and avoid downstream impacts to [the North Fork] (such as increased temperature from summer flow events).

Since the stormwater system will be releasing water that has undergone enhanced treatment into a gently-sloped vegetated 'buffer,' the narrower width proposed is expected to have a negligible impact [on] existing water quality conditions in the ditch tributary. A negligible impact is barely measurable with no perceptible consequences. This statement presumes dense planting with native trees and shrubs . . . and the addition of groundcovers would also be beneficial.

Presently, shading along the [Tributary] is provided by WSDOT plantings and existing vegetation. Much of the on-site area adjacent to the ditch is emergent weeds and grasses. . . Given existing degraded on-site conditions and the proposed +/- 6.5 foot planting strip along the south property line, the site development is expected to have a minor impact on ditch tributary shading. A minor impact would result in a detectable change, but the change would be localized and small. To ensure the impact is minor, we recommend including native trees in the on-site planting area [adjacent to the Tributary]. As noted for water quality, dense planting with native trees and shrubs is recommended.

Exhibit C-1.e; SDP 0745 – 0754.

SEPA Review

9. The City acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington RCW (RCW). Initially, the City issued a proposed Mitigated Determination of Nonsignificance (MDNS) on April 26, 2019, with a comment deadline of May 9, 2019. The proposed MDNS included findings of fact that addressed the CAS, as well as the review memoranda prepared by The Watershed Company (up to that point). It noted that, while the North Fork is a Class 2 fish-bearing stream, the Tributary "is located off the project site and is unregulated by the City of Issaquah." The proposed MDNS included seven mitigation measures designed to ensure the proposal would not have a probable, significant adverse impact on the environment. These included measures related to protection of the North Fork, and to further stormwater review and analysis, and required revisions to and implementation of the Applicant's proposed mitigation plan (put forth in the CAS). *SDP 0224 – 02271.*
10. At the conclusion of the comment period associated with the proposed MDNS, the City conducted further review of the proposal, including review of the following: comments

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submitted by the Muckleshoot Tribe concerning the Tributary and the use of it by juvenile salmonids; the Applicant's Revised CAS; notes from the Rivers and Streams Board meetings, especially on June 4, 2019; updated project plans submitted on July 12, 2019, incorporating greater detail on stormwater management and proposed landscaping; the additional third-party review memorandum prepared by The Watershed Company (dated June 4, 2019) assessing the Revised CAS; and additional project analysis by City staff, including a detailed staff memorandum on SEPA. After reviewing this information, along with the Applicant's environmental checklist, the City determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS on August 14, 2019, with an appeal deadline of September 4, 2019. Required mitigation included measures related to protection of the North Fork and the Tributary, a requirement related to further stormwater review and analysis, and implementation of the Applicant's proposed mitigation plan (from the Revised CAS). *SDP 0224 – 02271*.

11. On August 22, 2019, prior to expiration of the appeal deadline, the City withdrew its SEPA determination, in light of the remand required by the Commission. Following this, the City allowed for additional comments to be submitted, under SEPA, and received and reviewed additional information, including the following: the Water Source Memorandum; the Fish Habitat Memorandum; The Watershed Company's memorandum reviewing the Fish Habitat Memorandum; a memorandum prepared by City staff, dated September 26, 2019, responding to the Commission's remand request; an additional memorandum prepared by City staff, dated October 2, 2019, specifically analyzing the project for review under SEPA; additional public comments received at a final meeting of the Rivers and Streams Board on October 1, 2019; and dozens of written comments submitted to the Rivers and Streams Board, the Commission, and the City. *Exhibit C-1*.
12. On October 2, 2019, the City again determined that, with mitigation, the proposal would not have probable, significant adverse environmental impacts and issued a Revised MDNS for the proposal. Factual findings in the Revised MDNS note: comments from the Muckleshoot Tribe and information prepared by WSDOT indicate that the Tributary is known to contain juvenile salmonids and provides habitat suitable for "forage and rest" for salmonids; the Applicant provided documentation showing the project would not have significant adverse impacts to water quality or shading as it pertains to existing salmon habitat in the Tributary; existing off-site vegetated areas along the Tributary provide water quality, shading, and large woody debris habitat functions; additional on-site vegetated areas provide shading and protect water quality; wildlife habitat along the North Fork would be improved through buffer enhancement; proper location, design, construction and maintenance of the project's storm drainage facilities is necessary to ensure the protection of water and stream quality; and mitigation measures are necessary to prevent human intrusion and disturbance to the North Fork and Tributary. *Exhibit C-1*.

13. The MDNS included required mitigation measures, including: measures related to the enhancement and protection of the North Fork and the Tributary, including a requirement that the stream and buffer area be “encumbered by a public open space, conversion easement granted to the City of Issaquah, or other open space protection mechanism”; a requirement that any stormwater discharges and/or structures within or draining to critical areas be shown on stormwater plans and quantified and mitigated; and implementation of required mitigation related to reduction of the stream buffer associated with the North Fork (as detailed in the Revised CAS). Of particular note, Condition 1 of the MDNS states:

The purpose and intent of the following conditions are to minimize project-related significant adverse environmental impacts to the adjacent drainage ditch, south of the project site located in the Washington State Department of Transportation (WSDOT) right of way. A portion of the ditch has been designed by WSDOT to provide forage and rest habitat for salmonids entering from the North Fork of Issaquah Creek:

- i. Adjacent on-site planting areas shall be planted with a mixture of native shrubs and trees in order to provide shading and natural water filtration, and groundcover to provide a more structurally complex habitat. If possible, the applicant is encouraged to also add native plants, shrubs, and groundcover in off-site areas adjacent to the ditch owned by WSDOT. Plant densities shall be a minimum of nine feet on center for trees and five feet on center for shrubs. Planting densities are intended to provide a total number of plants per area – plants should be placed in random, naturalized clusters. Vine maples are considered a shrub and not a tree, so an alternative native tree species must be selected and approved by the City’s consultant during Landscape permit review.
- ii. In order to discourage the intrusion of people or animals, the applicant shall install a 4-foot high split rail wooden fencing along the property line adjacent to the ditch. To prevent vehicle intrusion, wheel stops or similar mechanisms preventing vehicle overhang, shall be installed at the edge of the display areas along the site perimeter near the ditch. These features must be shown on the applicant’s Site Work permit.
- iii. Temporary erosion and sediment control (TESC) measures shall be required for this site according to City codes and standards; however, as an extra precaution to mitigate the proximity of construction activities to fish habitat, a double silt fence shall be installed adjacent to the North Fork of Issaquah Creek and the off-

site ditch. The location and extent of the fence will be determined with city staff during the Site Work permit review.

Exhibit C-1.

14. The Revised MDNS also noted that a 14-day appeal period would end on October 16, 2019, that the MDNS was being issued in association with the Commission's decision on the SDP permit, and that "all appeals shall be combined with an appeal of that permit decision, pursuant to IMC 18.04.250." *Exhibit C-1.*

SDP Decision

15. On the same date the Revised MDNS was issued, the Commission concluded its public meeting on the SDP application, granting project approval. On October 9, 2019, the Commission issued its decision. The decision notes that the Commission reviewed the same information City staff reviewed prior to issuing the Revised MDNS (detailed above), including all submitted technical reports and public comments. The Commission decision included approximately 20 conditions that must be adhered to, including compliance with the MDNS mitigation measures and conditions related to tree protection/replacement, landscaping, project timing, the installation of wheel stops adjacent to buffer areas, and design requirements.⁴ The decision stated that a closed record appeal of the decision would be possible and provided for an appeal deadline of October 23, 2019. *SDP 0984 – 0998.*

SDP Appeal

16. The City received IEC's appeal of the SDP, dated October 23, 2019. In it, the Appellant alleges the following: the Tributary to the North Fork of Issaquah Creek is a regulated F water body, not a fish-bearing ditch; an advisory map from 1996 was used to determine the Tributary may be considered a ditch, and updated information is needed; mitigation sequencing was not followed; tree retention requirements (CIDDS 10.13) were improperly applied; consultant reports erroneously state there are no fish in the Tributary; limits for allowing buffer reduction to the North Fork of Issaquah Creek were not properly calculated; the quantity of re-vegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function"; and the River & Streams Board meeting removed "a voice from the board" that potentially changed the information coming out of that meeting. *Notice of Appeal (Site Development Permit), dated October 23, 2019.*
17. The City transmitted the appeal to the Hearing Examiner and, on October 24, 2019, the Hearing Examiner issued a pre-hearing order setting the SDP appeal hearing for November 19, 2019, and allowing for the submission of pre-hearing motions and briefs.

⁴ The Commission decision includes 35 numbered conditions. Several of these, however, are denoted "[Deleted by staff]." *Exhibit C-5.*

The parties agreed to a revised hearing date and, accordingly, a revised pre-hearing order was issued on October 30, 2019, setting the hearing for December 9, 2019. *Hearing Examiner's Pre-Hearing Order, dated October 24, 2019; Revised Pre-Hearing Order, dated October 30, 2019.*

Motions and Briefs

18. Following issuance of the revised pre-hearing order, the Hearing Examiner received several motions, including cross-motions for summary judgment from the Appellant and Applicant on the issue of classifying the Tributary as a stream or a ditch, as well as several motions related to the appeal of the MDNS.⁵ In a third revised pre-hearing order, issued November 21, 2019, the Hearing Examiner noted that responses to the dispositive motions would be due by November 25, 2019, as was previously detailed in the second revised pre-hearing order. The Hearing Examiner also noted that, unfortunately, his initial pre-hearing orders mistakenly stated that the consolidated hearing would involve an open record as to both the SEPA appeal and SDP appeal. The Hearing Examiner explained that, as required by IMC 18.04.250(E) and RCW 36.70B.060(6), the portion of the hearing related to the SDP appeal would be on a closed record. In a fourth revised pre-hearing order, also issued on November 21, 2019, the Hearing Examiner noted that the appeal hearing would begin earlier than originally scheduled, at the request of the parties. The parties submitted several additional motions and, on November 29, 2019, the Hearing Examiner issued a fifth revised pre-hearing order. This order clarified that the Hearing Examiner would begin by hearing oral argument on any dispositive motions at the outset of the hearing; followed by hearing the SEPA appeal as an open record hearing, with exhibits, witnesses, and testimony; and concluding with the SDP appeal hearing proceeding, with argument on the closed record. The Appellant continued to submit motions and, on December 5, 2019, the Hearing Examiner issued a "Response to Appellant's Motion for Clarification," in which procedural matters were clarified, and the Hearing Examiner stressed that no further motions would be considered. *See Attachment A.*
19. The Applicant timely submitted a pre-hearing brief, in which it responded to the Appellant's SDP appeal issues as follows:
 - The definitions section of the critical areas code, IMC 18.10.390, especially the definition of "stream," supports the classification of the unnamed Tributary as a ditch.⁶
 - The City properly relied on the 1996 advisory map in determining that the unnamed Tributary is a ditch; the Appellant lacks any legal basis to challenge the City's reliance on its resource map.

⁵ These motions are separately addressed in the companion decision on the SEPA appeal.

⁶ The Appellant and Applicant submitted cross-motions for summary judgment on this issue. Because the Hearing Examiner addresses this issue as part of the SDP conclusions, a separate analysis is unnecessary.

- The record demonstrates that mitigation sequencing was followed regarding the North Fork of Issaquah Creek and its buffer and that no mitigation sequencing was required for the Tributary, classified as a ditch, because it is not a critical area.
- The Applicant fully complied with tree retention requirements under the municipal code and the Central Issaquah Development and Design Standards.
- Whether consultant reports erroneously state there are no fish in the Tributary is irrelevant because the City did not rely on the consultant reports' determination that the Tributary lacked fish when issuing the SDP. In addition, all parties accept the fact that fish forage and rest in the Tributary.
- The buffer reduction permitted by the City is expressly allowed under IMC 18.10.790. Nothing in the critical areas ordinances required the City to subtract from the allotted buffer reduction the amount of reduced buffer on the opposite side of the Creek, on property not owned/controlled by the Applicant.
- The Appellant's contention that the quantity of revegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function" is belied by the final Critical Areas Study.
- A member of the Rivers & Streams Board voluntarily recused herself from participating as a board member addressing the proposal because of her membership with IEC, the member participated in her capacity as a member of the public, and, even assuming that the member was improperly removed, the Board acts only in an advisory capacity with no binding decision-making authority over the SDP.

Applicant's Brief, pages 9 through 15, dated November 25, 2019.

20. The City submitted a pre-hearing brief, in which the City responded to the Appellant's SDP appeal issues as follows:
 - The Washington State Department of Fish and Wildlife's classification of the unnamed Tributary as a regulated F water body does not control its classification for purposes of the Tributary's critical areas treatment under the City's critical areas regulations.
 - The 1996 Issaquah Creek Final Basin and Nonpoint Action Plan is not merely advisory, it is the legislatively adopted standard for distinguishing streams from other artificial water courses. The definition for "ditch" in IMC 18.10.390, for instance, states that a ditch is a "long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996)."
 - Mitigation sequencing was followed for the North Fork of the Issaquah Creek. Mitigation sequencing is not required for the unnamed Tributary because it is not a regulated critical area.

- The City it is not aware of any reports stating that there are no fish in the unnamed Tributary. It relied on several expert reports that addressed the presence of fish in the Tributary during review of the proposal.
- The plain language of the critical areas definitions makes clear that each side of a buffer is to be considered in isolation when applying dimensional requirements, that it would be unfair to calculate a property owner's buffer status against a different property owner's eligibility for buffer reduction, and it is impracticable to require the City to track the precise contours of a buffer that is not on a subject property to evaluate an applicant's request for a buffer reduction. The City correctly determined that the Applicant would be allowed to reduce the buffer on the North Fork in compliance with the municipal code.
- In response to the Appellant's contention that the quantity of revegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function," the City argues that the provision of IMC 18.10.790(D)(4) that the Appellant relies on is merely a purpose statement without binding effect. Alternatively, the City argues that the expert reports it considered when issuing the SDP demonstrate that the proposal would improve water quality and habitat functions.
- A member of the Rivers & Streams Board voluntarily recused herself from acting in her board capacity because of her membership with IEC but still was allowed to participate in the meeting in her capacity as a member of the public.

City of Issaquah's Pre-Hearing Brief, pages 9 through 12, dated November 25, 2019.

21. The Appellant did not submit an opening brief. It did, however, submit a pre-hearing response brief, in which it argued:
- The unnamed Tributary qualifies as a critical area under IMC 18.10.390 regardless of whether it is classified as a stream.
 - The City was required to look beyond the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining whether the unnamed Tributary was a critical area.
 - The record does not support the Applicant's claim that it took every possible step in reducing the project's footprint to allow for greater protection of the North Fork of Issaquah Creek and the unnamed Tributary.
 - The project was not entitled to a modification of the tree retention requirements because the permit approval documents do not include a finding that all necessary criteria for modification were met and because the record demonstrates that less than 25 percent of the total caliper of all significant trees will be preserved even when accounting for groupings of smaller trees.
 - The City failed to account for an existing reduced buffer on the opposite side of the North Fork of Issaquah Creek when permitting a reduced buffer on the subject property's side of the Creek.

- The quantity of re-vegetation required for the reduced buffer does not demonstratively improve water quality and habitat function because the City assumed the Applicant could receive WSDOT permission to enhance the buffer on WSDOT's side of the North Fork of Issaquah Creek.

Appellant's Pre-Hearing Response Brief, pages 8 through 18, dated December 3, 2019.

Closed Record Appeal Hearing

22. In light of time constraints, the parties agreed at the closed record SDP hearing to waive oral argument in lieu of submitting written briefing. At the conclusion of the closed record SDP hearing, the Hearing Examiner ruled that the Applicant and the City could submit briefs in response to the issues detailed in the Appellant's December 3, 2019, pre-hearing response brief, including: that the City incorrectly relied on a 1996 Map to exclude the Tributary from the CAO definition of a "stream"; the record lacks adequate support for the City's assertion that it complied with mitigation sequencing requirements; the City improperly applied the tree retention requirements of CIDDS 10.13; the limits for allowing buffer reductions to the North Fork of Issaquah Creek were not properly calculated consistent with IMC 18.10.790(D)(1); and the limits for allowing buffer reductions to the North Fork of Issaquah Creek were not properly calculated as required by IMC 18.10.790(D)(4). The Hearing Examiner also ruled that the Appellant could file a brief in reply to the Applicant's and City's response briefs. *Oral Ruling of the Hearing Examiner.*
23. The Applicant filed a post-hearing brief, in which it argued:
 - The City was not required to look beyond the 1996 Issaquah Creek Final Basin Plan map to determine whether the unnamed Tributary was a stream or a ditch because IMC 18.10.390 expressly cites the map as a resource for determining whether a body of water fits within the definition of a ditch. Additionally, IMC 18.10.390's definition of a ditch does not reference the definition of critical areas and the City reliance on the 1996 map does not change the fact that the Tributary meets the definition of a ditch because it is supplied by water from entirely artificial sources.
 - Mitigation sequencing for the unnamed Tributary was not required because it is not a critical area. Mitigation sequencing for Issaquah Creek and its buffer was followed, and the Applicant and the City worked together to attempt to reduce the project's footprint.
 - The City complied with Criterion 6 of the tree retention modification requirements under CIDDS 10.13.B by including as an express condition of the SDP that the Applicant plant 110 trees or make payment to the tree fund in lieu of providing replacement trees. The City is not required to make an express finding that the Applicant has paid into the tree fund prior to issuing an SDP. The City also complied with Criterion 2 because there are only 4 or 5 small trees scattered

on the site, which do not constitute a “grouping,” rendering this Criterion inapplicable.

- The Appellant cannot meet its burden to show that the Applicant’s proposed buffer reduction exceeds the 25 percent permitted by Code.
- A Critical Areas Study addressing the project’s impact on the North Fork of Issaquah Creek concluded that the proposal would improve water quality, hydraulic function, and habitat function. Whether or not the Applicant will obtain permission from WSDOT to plant on WSDOT property does not change the project’s substantial improvement to the Creek and, thus, the buffer reduction was proper.

Applicant’s SDP Response Brief, dated December 19, 2019.

24. The City filed a response brief, in which it argued:

- IMC 18.10.390 required the City to utilize the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining whether the unnamed Tributary should be classified as a ditch because the map is formally incorporated into the definition of “ditch.”
- Mitigation sequencing was not required for the unnamed Tributary because it is not a critical area, and the City and Applicant followed mitigation sequencing for the Creek and its buffer. The City is not required to independently assess the Applicant’s assertion that it would not be feasible to further minimize the project footprint because City staff’s scope of review does not include a full financial audit and analysis of a project’s viability at various footprint sizes.
- The City properly applied the tree retention requirement of Chapter 10.13 CIDDS. CIDDS 10.13.B.2 does not require the Applicant to retain smaller trees such that the total caliper inches of retained small trees total 25% of the total caliper of significant trees on the site. The few healthy non-significant trees on the site are not in “groupings” and, thus, are not eligible for alternate retention under CIDDS 10.13.B.2. Additionally, the Development Commission determined that the Applicant could make up for deficits in tree retention through tree replacement, with specifics to be worked out during the landscape planning phase.
- The Appellant cannot meet its burden to show that the Applicant’s proposed buffer reduction exceeds the 25 percent permitted by the municipal code.
- The Hearing Examiner should not consider the Appellant’s argument regarding a critical area study requirement for a buffer reduction under IMC 18.10.790(D)(4)(c) because the Appellant did not raise this issue in its written appeal statement. The City notes that the Appellant’s appeal statement challenged the *quantity* of revegetation required for the reduced buffer as not being sufficient to demonstrate that the project would improve water quality and habitat functions, citing only to IMC 18.10.790(D)(4)(a). The City further contends that the Appellant’s argument fails on its merits because the Applicant’s May 16, 2019, critical areas study demonstrates that the proposed enhancements to vegetation

would improve water quality and habitat function. The City also asserts that the Appellant's argument that it should have required planting on WSDOT property must be rejected because the City does not have authority to impose this as a mandatory condition.

City of Issaquah's SDP Response Brief, dated December 29, 2019.

25. The Appellant filed a reply brief, in which it argued:
- The City erred by relying on an outdated 1996 map when classifying the unnamed Tributary as a ditch and should have examined more current materials documenting WSDOT's efforts to restore fish habitat in both the North Fork of Issaquah Creek and the unnamed Tributary.
 - The City made no effort to verify the Applicant's claim that it was not possible to shrink the project's footprint to preserve larger buffers.
 - Under a common sense reading of the tree retention requirements of CIDDS 10.13.B.2, modification cannot be approved if it does not incorporate smaller trees with equivalent total diameters. This interpretation applies regardless of whether the site contains enough smaller trees to meet this criterion. Additionally, the replacement trees decisions required by Chapter 10.14 CIDDS should have been made part of the permit decision and not implemented at a later stage of development.
 - There are no findings supporting the Development Commission's determination that the Applicant's proposed buffer reduction does not exceed the 25 percent permitted by the municipal code. Alternatively, even if no findings were required, the City and Applicant have failed to perform the necessary calculation to ensure that the proposed buffer reduction does not exceed the 25 percent permitted by code.
 - Although the Development Commission found that the project, as conditioned, provided sufficient buffer enhancement to mitigate the buffer reduction, it did so prior to omitting a condition requiring buffer enhancements on WSDOT property. Because the omission of the required buffer enhancements on WSDOT property constituted a significant reduction to the area of buffer enhancements, the Development Commission's decision does not accurately reflect the Development's Commission members' votes and must be vacated for improper procedure, lack of substantial evidence in support of facts, and errors of law. Additionally, the adopted mitigation measures are not based on an approved Critical Areas Study.

Appellant's SDP Reply Brief, dated December 30, 2019.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to make final decisions on appeals from decisions of the City's Development Commission. *IMC 18.03.060(D)*. Such appeals are closed record appeals,

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and the Hearing Examiner is limited to review of the evidence submitted at the open record appeal hearing before the Development Commission. *IMC 18.04.250(E)*.

Review Authority

The Hearing Examiner's duty is to review the entire record before him to determine whether an appellant has met his or her burden of proving that the City's decision was erroneous. Specifically, *IMC 1.32.020(E)* requires the Hearing Examiner to "affirm the decision unless from a review of the record it is determined the decision being appealed was clearly erroneous." To properly review the City's action, the Hearing Examiner must decide what facts are important to make a decision, determine those facts with reference to specific exhibits or testimony, draw conclusions from those facts, and make a decision based on those conclusions. *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994).

SDP Appeal Issues to Be Decided

The Hearing Examiner must carefully consider the scope of the appeal when making findings and conclusions to support any decision made in response to an appeal. Those issues identified in an appeal statement that are not pursued during the course of an appeal will be deemed abandoned by the Appellant and not considered further by the Hearing Examiner. *See, e.g., Seattle First-Nat'l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 243, 588 P.2d 1308 (1978). A "party abandons an issue by failing to pursue it on appeal by (1) failing to brief the issue or (2) explicitly abandoning the issue at oral argument." *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006). Moreover, the Hearing Examiner does not consider issues that are inadequately argued or given only passing treatment on appeal. *See, e.g., State v. Elliot*, 114 Wn.2d 6, 15, 786 P.2d 440 (1990).

In this appeal, the Appellant initially listed eight issues in its notice of appeal. The Appellant, however, has not provided any briefing addressing its claims on appeal that (1) consultant report erroneously stated there are no fish in the unnamed Tributary and (2) a voice was improperly removed from the Rivers & Streams Board that potentially changed the information coming out of that meeting. Accordingly, those issues are deemed abandoned and will not be addressed in this decision. The remaining appeal issues to be decided are as follows:

- (1) Whether the CDC properly found that the unnamed Tributary meets the definition of a "ditch" under *IMC 18.10.390* and that Tributary's classification as a ditch excludes it from critical areas regulations under Chapter 18.10 *IMC*.
- (2) Whether the City properly utilized the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining that the unnamed Tributary should be classified as a ditch.
- (3) Whether the City complied with mitigation sequencing required under City Code.
- (4) Whether the CDC properly applied tree retention modification requirements of *CIDDS 10.13.B*.

- (5) Whether the proposed buffer reduction along the North Fork of Issaquah Creek complies with City code.
- (6) Whether proposed buffer enhancements are sufficient to mitigate impacts to the North Fork of Issaquah Creek so as to justify the buffer reduction.

Conclusions Based on Findings

1. **The Commission properly determined that the unnamed Tributary is a ditch as defined in IMC 18.10.390 and that this classification dictates that the Tributary is not subject to critical areas regulations.** Under Chapter 18.10 IMC, “critical areas” are subject to additional environmental controls. IMC 18.10.390 defines *critical areas* as:

Any of those areas which are subject to natural hazards or those land features which support unique, fragile, or valuable natural resources including fish, wildlife and other organisms and their habitat and such resources which, in their natural state, carry, hold or purify water. *Critical areas include the following landform features:* erosion hazard areas, flood hazard areas, coal mine hazard areas, landslide hazard areas, seismic hazard areas, steep slope areas, *streams*, wetlands, and aquifer recharge areas. Critical area buffers are integral to the health of the critical area and therefore for functional purposes are considered a part of the critical area. However, unless indicated otherwise, measurements from critical areas are made from the outside edge of the protected landform feature (e.g., wetland, stream, etc.) and not from the outside edge of the buffer.⁷

Because this provision contains an exhaustive list of landform features included within the critical areas definition, landform features not included within the list are excluded from the definition of a critical area and are not subject to critical areas regulations. IMC 18.10.390’s definition of “streams,” a landform feature included within the critical areas definition, explicitly excludes “excavated or other entirely artificial watercourses, including irrigation ditches, swales, roadside ditches, canals, storm or surface water runoff devices.” In turn, IMC 18.10.390 defines “ditch” as “[a] long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996).” Accordingly, landform features appropriately classified as a ditch are not critical areas subject to critical areas regulations.

In addition, in finding that that the Tributary is a ditch under the municipal code, the Commission reviewed a September 19, 2019, report submitted by the Applicant’s consultants that concluded no natural sources provided water to the Tributary. The

⁷ Emphasis added.

Appellant has not identified any evidence in the record before the CDC disputing this conclusion.⁸

The Applicant and Appellant filed cross-motions for summary judgment on the issue of whether the unnamed Tributary at issue was properly classified as a ditch and, if so, whether the Tributary is therefore excluded from critical areas regulations. A party is entitled to summary judgment if, when viewing the facts in the light most favorable to the nonmoving party, no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. *See e.g., Camicia v. Howard S. Wright Contr. Co.*, 179 Wn.2d 684, 317 P.3d 987 (2014).

Because the uncontroverted evidence in the record establishes that no natural sources provide water to the Tributary, the Applicant is entitled to summary judgment on the issue of whether the Commission properly classified the Tributary as a ditch. And because the proper classification of a landform feature as a “ditch” excludes the landform feature from critical areas regulations as a matter of law, the Applicant is entitled to summary judgment on the issue of whether the Tributary was properly excluded from critical areas regulations. Conversely, the Appellant’s summary judgment motion arguing the contrary is denied. *Findings 1, 2, 6 – 8, 15 – 25.*

2. **The Commission properly utilized the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining that the unnamed Tributary should be classified as a ditch.** IMC 18.10.390 defines *ditch* as “[a] long narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water *that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996)*” (emphasis added). The Appellant concedes that the 1996 map referenced in the stream definition does not identify the Tributary at issue as a stream. *Appellant’s Pre-Hearing Response Brief, page 13, dated December 3, 2019.* The Appellant argues, instead, that the City was required to look at additional resource material to determine whether the Tributary should be classified as a stream because the 1996 map is outdated. This argument fails because IMC 18.10.390 specifically references only the 1996 map in its definition of “ditch.” *Findings 1, 2, 6 – 8, 15 – 25.*
3. **The Commission correctly determined that the Applicant complied with required mitigation sequencing under IMC 18.10.490.** Under IMC 18.10.490, sequential mitigation measures must be followed for development on sites containing critical areas to further the goal of no net loss of ecological functions of environmental critical areas.

⁸ The Appellant relies on declarations outside the SDP record to argue that there is evidence that natural water sources contribute to the flow in the tributary. *Appellant’s Response to Applicant’s Summary Judgment Motion, pages 2 and 3, dated November 25, 2019.* Because this is a closed record appeal, the Hearing Examiner does not consider these declarations in resolving this appeal or the cross-motions for summary judgment on this issue.

The Appellant argues that the City failed to meet this requirement because it did not independently assess whether the Applicant's proposed project footprint could be reduced to avoid impacts to the Tributary and the North Fork of Issaquah Creek. As discussed above, the Tributary is not a critical area and, thus, mitigation sequencing was not required with respect to the Tributary. Regarding mitigation sequencing applicable to Issaquah Creek, the Applicant asserted that it was not feasible to further reduce its project footprint to provide a greater buffer to the Creek due to program requirements for site circulation, building size, and requirements for customer and display parking. The Appellant argues the City erred by doing "nothing to verify the applicant's claims," but the Appellant does not explain what more the City was required to do and does not provide any legal authority supporting its argument that the City was required to independently assess the Applicant's assertion that it was not financially or logistically feasible to reduce the project footprint. *Applicant's SDP Reply Brief, page 2, dated December 30, 2019*. Accordingly, the Appellant fails to demonstrate that the City erred by failing to comply with mitigation sequencing. *Findings 1 – 25*.

4. The Commission properly applied the tree retention modification requirements of CIDDs 10.13.B. CIDDs 10.13.B allows for a reduction of tree retention requirements if, as applicable here, the following criteria "*are met*:"

1. The modification is consistent with the purpose and intent of this Chapter, and the Central Issaquah Plan goals and policies.
2. The modification incorporates the retention of a grouping(s) of smaller trees that makes up the equivalent diameter inches and retains other natural vegetation occurring in association with the smaller tree grouping(s).
3. The modification is necessary because the size, shape, topography, location of the subject property may jeopardize the reasonable use of the property and reasonable alternatives do not exist.
4. The modification is necessary because the proposed buildings and site layout, required ingress/egress, existing and proposed utility locations, trails, storm drainage improvements or similar constraints may jeopardize the reasonable use of the property and reasonable alternative that are consistent with the Central Issaquah Plan do not exist.

(Emphasis added).

Additionally, in all modifications, the following criterion (Criterion 6) "*is required to be met*: . . . The applicant replaces trees on site and/or off-site or pays a fee in-lieu-of in accordance with 10.14.C-D Replacement Trees for reductions less than the minimum tree density requirement." CIDDs 10.13.B.6 (emphasis added).

The Appellant first argues that the Commission's findings were insufficient to permit the tree retention modification because it did not specifically find that Criterion 6 had been met. This argument overlooks language distinguishing Criterion 6 from Criteria 1 through 4. In contrast to the requirement that Criteria 1 through 4 "are met," criterion 6 must be "required to be met." *CIDDS 10.13.B*. This difference in language makes sense in light of Criterion 6's reference to a future event. Here, the Commission found that Criteria 1 through 4 have been met and that the proposal, with conditions, would comply with the modification to tree retention requirements. And the Commission included as a condition that the Applicant "shall plant 110 trees measuring a minimum of 2" caliper on site or in an approved off-site location, or else make a payment into the tree fund in lieu of providing replacement trees," satisfying Criterion 6. Because *CIDDS 10.13.B* does not require a finding that the Applicant has met Criterion 6, and because the Commission imposed a condition requiring Criterion 6 to be met, the Appellant cannot show error on this basis.

The Appellant also argues that the CDC lacked evidence supporting its finding that the Applicant's proposal met Criterion 2. Specifically, the Appellant argues that, to be eligible for a tree retention modification, Criterion 2 required the Applicant to retain smaller trees on site such that their total caliper was equivalent to 25 percent of the total caliper of all significant trees on the site. Both the City and the Applicant point out that this interpretation of Criterion 2 is both infeasible under the present circumstances in light of the dearth of small trees on-site and would lead to absurd results. The Hearing Examiner concurs with the City and the Applicant's assessment of this criterion.
Findings 1 – 3, 15 – 25.

5. **The Commission properly determined that, with conditions, the Applicant's proposed 25 percent buffer reduction along the North Fork of Issaquah Creek would comply with IMC 18.10.790(D).** Issaquah Creek is a Class 2 stream used by salmonids, which normally requires a 100-foot buffer under IMC 18.10.785(C)(2). Under IMC 18.10.790(D)(4), however, buffer reduction provisions may be used (separately or together) provided that the "cumulative, total stream buffer reduction shall not exceed twenty-five (25) percent of the required stream buffer" *or* "encroach into the buffer at any location by more than twenty-five percent of the standard stream buffer width." City staff reviewed the Applicant's proposed reduced buffer reduction and determined that it would comply with IMC 18.10.790(D). The Appellant does not appear to contend that the proposed buffer reduction would encroach into the buffer at any location by more than the 25 feet permitted, but appears to argue that the City failed to calculate whether the total area of the buffer reduction would exceed the 25 percent allowed under IMC 18.10.790(D). This matter is solved by simple mathematics. The Appellant requested that the stream buffer associated with the North Fork be reduced by 25 percent (to 75 feet) along the entirety of the critical area. By default, this would result

in precisely 25 percent of the buffer being reduced. If the Appellant believed that a different calculation was appropriate, it had the burden of supplying it. *Findings 1 – 25.*

6. **The Commission did not err in determining that, with conditions, the Applicant’s proposed buffer enhancements would be sufficient to mitigate impacts to the North Fork of Issaquah Creek so as to justify a buffer reduction under IMC 18.10.790.** Substantial evidence in the record, including the Revised Critical Areas Study, showed that the proposal would appropriately mitigate impacts to the North Fork and would result in functional lift to water quality, hydrologic function, and habitat function for the North Fork. The Appellant failed to submit evidence contradicting this. Moreover, while the Appellant contends that the City should have required the Applicant to plant additional vegetation in the WSDOT right-of-way as a permit condition—an issue it raised for the first time in its response brief—the City lacks authority to require this. The Applicant has complied with the vegetation enhancement provisions of the municipal code. *Findings 1 – 25.*

DECISION

Because substantial evidence supports the Commission’s decision to issue an SDP for the proposal, the appeal is **DENIED**.

DECIDED this 2nd day of March 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

Attachment A

Exhibits:

The parties agreed to designate the entire SDP record before the Development Commission as exhibits for the SDP appeal, which were indexed as follows:

1. City Staff Report, dated December 6, 2019 [not considered]
2. Development Commission Minutes, dated May 1, 2019 (at SDP 0001)
3. Development Commission Agenda Packet, dated May 1, 2019 (at SDP 0008)
4. Development Commission Staff Presentation, dated May 1, 2019 (at SDP 0181)
5. Development Commission Minutes, dated August 21, 2019 (at SDP 0219)
6. Development Commission Agenda Packet, dated August 21, 2019 (at SDP 0220)
7. Development Commission Staff Presentation, dated August 21, 2019 (at SDP 0342)
8. Development Commission Minutes, dated September 25, 2019 (at SDP 0371)
9. Development Commission Agenda Packet, dated September 25, 2019 (at SDP 0372)
10. Development Commission Minutes, dated October 2, 2019 (at SDP 0492)
11. Development Commission Agenda Packet, dated October 2, 2019 (at SDP 0501)
12. Development Commission Staff Presentation, dated October 2, 2019 (at SDP 0977)
13. Notice of Decision, dated October 2, 2019 (at SDP 0984)
14. Development Commission Meeting Video, dated May 1, 2019 (submitted electronically)
15. Development Commission Meeting Video, dated August 21, 2019 (submitted electronically)
16. Development Commission Meeting Video, dated September 25, 2019 (submitted electronically)
17. Development Commission Meeting Video, dated October 2, 2019 (submitted electronically)
18. Letter from Connie Marsh to Development Commission, dated August 21, 2019 (at SDP 0999)
19. Letter from Issaquah Environmental Council to Development Commission, dated August 20, 2019 (at SDP 1004)

The parties also agreed to designate the following exhibit admitted in the SEPA MDNS appeal hearing for consideration in this SDP appeal:

- C-1. Revised Mitigated Determination of Nonsignificance, dated October 2, 2019, with the following attachments:
 - a. SEPA Environmental Checklist, submitted March 5, 2019
 - b. Critical Areas Study (Revision 01), dated May 16, 2019
 - c. Tributary Drainage Basin Review, OSG|O'Neill Service Group, dated September 11, 2019

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- d. Evaluation of Impact on Tributary, OSG|O'Neill Service Group, dated September 25, 2019
- e. Environmental Consultation & Peer Review for SEPA, The Watershed Company, dated September 26, 2019
- f. City of Issaquah River & Streams Board minutes, dated March 26, 2019; City of Issaquah River & Streams Board minutes, dated June 4, 2019
- g. Revised SDP Application plan set, SDP Rev "C", dated July 12, 2019

Appeal, Motions, Pleadings, and Orders:

- Notice of SDP Appeal, Issaquah Environmental Council, received October 23, 2019
- Hearing Examiner's Pre-Hearing Order, dated October 24, 2019
- Hearing Examiner's Pre-Hearing Order, (*2nd Revised October 30, 2019*)
- Notice of Appearance (David A. Bricklin), dated November 18, 2019
- Issaquah Environmental Council's Motion for Summary Judgment on the issue of the Proper Characterization of the Tributary of the North Fork of Issaquah Creek, dated November 18, 2019; Declaration of William J. Taylor, dated November 15, 2019; Declaration of Connie Marsh, dated November 18, 2019
- Applicant's Motion for Summary Judgment - Site Development (SDP) Appeal, dated November 18, 2019
- Applicant's Motion for Summary Judgment - MDNS Appeal, dated November 18, 2018, [*Withdrawn*]
- Motion to Dismiss Appeals for Lack of Standing, dated November 18, 2019 [*Withdrawn*]
- Hearing Examiner's Pre-Hearing Order (*3rd Revised November 21, 2019*)
- Hearing Examiner's Pre-Hearing Order (*4th Revised November 21, 2019*)
- Issaquah Environmental Council's Motion to Amend Third Prehearing Order, dated November 22, 2019
- Amended Notice of Appearance (Katherine D. Hambley), dated November 22, 2019,
- City of Issaquah's Pre-Hearing Brief, dated November 25, 2019
- City of Issaquah's Response to Cross-Motions for Summary Judgment and Applicant's Motion to Dismiss, dated November 25, 2019; Declaration of Katherine Hambley in Support of City's Response to Motions, dated November 25, 2019
- Applicant's Response to IEC's Summary Judgment Motion RE: Characterization of Tributary as Part of the Site Development Permit (SDP) Appeal, dated November 25, 2019
- Applicant's Hearing Brief, dated November 25, 2019
- Issaquah Environmental Council's Response to the City's Motion for Summary Judgment – Site Development Permit (SDP), dated November 25, 2019
- Issaquah Environmental Council's Response to Motion for Summary Judgment – MDNS Appeal, dated November 25, 2019
- Issaquah Environmental Council's Opposition to Applicant's Motion to Dismiss for Lack of Standing, dated November 25, 2019; Declaration of John MacDuff on Behalf of

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- Issaquah Environmental Council, dated November 22, 2019; Declaration of Connie Marsh, dated November 22, 2019; Declaration of David Kappler, dated November 22, 2019; Declaration of Janet Wall, dated November 22, 2019; Second Declaration of William J. Taylor, dated November 25, 2019
- Applicant's Response to IEC's Motion to Amend Third Pre-Hearing Order, received November 27, 2019
 - Issaquah Environmental Council's Motion to Strike and Response to Waiver Argument, dated November 27, 2019
 - Stipulation Regarding Designation of SDP Record, dated November 27, 2019
 - Hearing Examiner's Order on Motions and revised Pre-Hearing Order (*5th Revised November 29, 2019*)
 - Issaquah Environmental Council's Reply RE Open Record Hearing, dated November 29, 2019
 - Hearing Examiner's Response to Appellant's Request for Reconsideration, dated December 3, 2019
 - Appellant's Witness and Exhibit List, dated December 3, 2019
 - Issaquah Environmental Council's Pre-Hearing Response Brief, dated December 3, 2019
 - Issaquah Environmental Council's Motion for Clarification of Order on Motions and Revised Prehearing Order (November 29, 2019), dated October 4, 2019
 - Appellant's Amended Exhibit List, dated December 4, 2019
 - Hearing Examiner's Response to Appellant's Motion for Clarification, dated December 5, 2019
 - Index to the SDP Record, dated December 16, 2019.
 - Issaquah Environmental Council's Pre-Hearing Response Brief, as amended to include SDP record citations on December 16, 2019
 - City of Issaquah's Response to IEC's Pre-Hearing Response Brief, dated December 19, 2019
 - Applicant's Response Regarding SDP, dated December 19, 2019
 - Applicant's Citations and Objection to Record RE Ditch/Tributary Issues, dated December 19, 2019
 - Issaquah Environmental Council's Response to Applicant's Objections, dated December 30, 2019
 - Issaquah Environmental Council's Reply Brief on Permit Issues, dated December 30, 2019
 - Hearing Examiner's Update on Decision, dated February 21, 2020

